HIGH COURT OF URRARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

Chapter VIII, Rule 32(2) (b)

Description of the case

W.P. No. 890 of 2005 (S/S)

Balbir Singh

Vs

Union of India and others.

Approved for reporting

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~~Not Approved for Reporting~~

Date of decision: 22-12-2005

Initials of Judge

In the High Court of Uttaranchal, at Nainital.

Civil Writ Petition No. 890(S/S) of 2005.

Balbir Singh S/o Prem Singh,
R/o Village Lalpani, Post Office
Kumbhichaur,
Pauri Garhwal, Uttaranchal ….. Petitioner.

Versus

1- Union of India through Secretary
Defence Govt. of India, New Delhi.
2- Deputy General of Infantry/Infantry
General Staff Branch, Army Headquarter,
D.H.Q., P.O. New Delhi.
3- Officer-in-Chief,
Garhwal Rifles, Record Office,
Lansdown, District Pauri Garhwal … Respondents.

Sri Lok Pal Singh, learned counsel for the petitioner.
Sri Vikas Pandey, i/b for Sri V.B.S. Negi, Assistant Solicitor General, for the respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri Lok Pal Singh, learned counsel for the petitioner and Sri Vikas Pandey, holding brief for Sri V.B.S. Negi, learned Assistant Solicitor General, for the respondents.

The petitioner has prayed for issue of a writ in the nature of mandamus commanding the respondents to give appointment to the petitioner under Dying in Harness Rules.

Briefly stated the facts giving rise to the present writ petition are that the brother of the petitioner late Ranveer Singh was posted on the post of Rifleman in Garhwal Rifles and he died on 25.10.2001 while he was on duty when he was fighting against the terrorists at Jammu and Kashmir. Smt. Sapna Devi, the widow of Ranveer Singh, was dependant on late Ranveer Singh and when Ranveer Singh died Smt. Sapna Devi applied for appointment under Dying in Harness Rules. The District Soldiers Board wrote a letter dated 14-03-2002 stating therein that the service may be given to her except the area of Kotdwar and alternatively if Smt. Sapna Devi gives consent then the appointment can be given under priority to her

brother in law. The said correspondence in this regard is quoted below:-

"सेवा में,

श्रीमती पीताम्बरी देवी माता
स्व0 श्री रणवीर सिंह
ग्राम लालपानी पो0कुम्भीचौड
कोटद्वार, पौडी गढवाल(उत्तरांचाल)

विषयः सेना में बीरगति प्राप्त सैनिक के किसी सदस्य को नौकरी हेतु प्रार्थना पत्र।

1. आपके प्रार्थना पत्र दिनांक 26.12.2001 तां के महामहिम मुख्य मन्त्री उत्तरांचल शासन को प्रेषित है के सन्दर्भ में:–
2. सेना में बीरगति प्राप्त सैनिक के आश्रित को केन्द्रीय सरकार द्वारा प्राथमिकता 2 (ए) के अर्न्तगत रोजगार देने का प्राविधान है इसी के अर्न्तगत आपकी बहू ने अपने अभिलेख कार्यालय को पत्र भेजा है, जिसके उत्तर में अभिलेख कार्यालय गढवाल राईफल्स लैन्सडाउन ने आपको सूचित किया है कि कोटद्वार के अलावा किसी क्षेत्र में इनको नौकरी दी जा सकती है।
3- आपकी बहू यदि चाहे तो प्राथमिकता 2 (ए) के अर्न्तगत वह अपने बदले अपने देवर को नौकरी दिलवा सकती है। अतः आपको सलाह दी जाती है कि आप कृपया अपनी बहू की ओर से इस सन्दर्भ में अभिलेख कार्यालय से पत्राचार करें।"

The name of the petitioner was enrolled on 31-05-2002 for giving priority in the employment. Smt Sapna Devi has also no objection in marrying with her Dewar on the advise of the Record Office Lansdowne, as will appear from their letter. The said advise is quoted below:-

"सेवा में,
श्रीमती सपना देवी
नॅ0 4078366 स्व0 रा0मै0
रणबीर सिंह
ग्राम लालपानी पो0कुम्भीचौड
कोटद्वार, (उत्तरांचल)
पिन कोड– 246149

प्राथमिकता 2–ए के आधार पर रोजगार हेतु।

1. आपके पत्र दिनांक 05 फरवरी 2003 के सन्दर्भ में।

2- आपके पत्र पर सहानुभूतिपूर्वक विवेचना किया गया। आपको सूचित किया जाता है कि आपके देवर श्री बलबीर सिंह को प्राथमिकता 2–ए के अर्न्तगत रोजगार एवं प्रषिक्षण महानिदेषालय नई दिल्ली में नाम पंजीकृत है। आपने अपने पत्र में लिखा है कि अनुकम्पा के आधार पर रोजगार मेरे देवर को दिया जाय।

3- आपको यह भी सूचित किया जाता है कि सरकारी नियमानुसार यदि शहीद सैनिक का सगा भाई बीररानी से विवाह कर लेता है तभी वह अनुकम्पा के आधार पर रोजगार का हकदार है।

4- अतः आपको पुनः सलाह दी जाती है कि आप अपने देवर श्री बलबीर सिंह को रोजगार दिलाने हेतु व नाम पंजीकृत करवाने के लिये जिला सैनिक बोर्ड पौडी से सम्पर्क करें।"

The petitioner has made representations for the appointment on various occasions. The petitioner has also applied in format on 10.03.2003. However the petitioner received reply on 22-11-2004 that the application form of her present husbant has been sent to the head office. After receipt of any information will be communicated. Since than the petitioner has not received any communication.

The Apex Court in the matter of Smt. Sushma Gosain and others versus Union of India and others; (1989) 4 Supreme Court Cases 468 has held as under:-

> "We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

The Apex Court in the case of State of U.P. and others vs. Paras Nath A.I.R. 1998 SC page 2612 in para –5 has held as under:-

"The purpose of providing employment to dependent of a Government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointment are permissible on compassionate grounds provided there are Rules providing for such appointment. The purpose is to provide immediate financial assistance to the family f the deceased government servant."

In the case of Dhalla Ram vs. Union of India AIR 1999 SC 564, the Hon'ble Supreme Court has held as under:-

"The very object of making appointment on compassionate grounds is to rehabilitate the family in distress of the deceased employee who dies in harness. There should be no difficulty to consider an eligible candidate for providing immediate sustenance to the members of the deceased employee. He had applied on July 15, 1987 and the application was rejected on July 14, 1988. He filed the O.A. on July 12, 1993. In view of the long delay, after the refusal by the Government, in filing the application, the same cannot be entertained. The appointment on compassionate grounds is not a method of recruitment but is a facility to provide for immediate rehabilitation to the family in distress for relieving the dependent family members of the deceased employee from destitution."

Further it may be pointed out that to live in a dignified manner is a fundamental right as contained under Article-21 of the Constitution of India and no one can be deprived of getting the necessities of life, as has been held by the Apex Court in the case of Kapila Hingorani vs. State of Bihar; (2003) 6 SCC

Supreme Court Cases. The relevant paragraphs are quoted below:-

> “52. Yet again in Shantistar Builders v. Naryan Khimalal Totame this court observed:(SCC p. 527, para 9)
>
> 9. Basis needs of man have traditionally been accepted to be three- food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in.
>
> 53. This Court upheld the right to shelter in P.G. Gupta vs. State of Gujarat, Chameli Singh and Ahmedabad Municiple Corpn. Vs. Nawab Khan Gulab Khan.
>
> 54. In Chameli Singh case this court held: (SCC p. 555, para 8)
>
> “8. In any organized society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhabit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society.”
>
> It proceeded to hold: (SCC pp. 555-56, para8)
>
> “Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the directive principles, the State should be deemed to be under an obligation to security it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organized civil community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the fundamental duties and to be a useful citizen and equal

participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being."

55. The term "life" used in Article 21 of the Constitution of India has a wide and far-reaching concept. It includes livelihood and so may other facets thereof. "Life" as observed by Field, J. in Munna v. Illinois means something more than mere animal existence and the inhibition against the deprivation of the life extends to all those limits and faculties by which life is enjoyed (See Board of Trustees of the Port of Bombay vs. Dilipkumar Raghavendranath Nadkarni and Olga Tellis vs. Bombay Municipal Corpn)"

a perusal of the record of the writ petition shows that immediately after the death of the bread earner the wife has applied for appointment and thereafter on the advice of the Record Office the petitioner applied for employment and the format of the petitioner was forwarded to the head office but no employment was provided to him.

Consequently writ petition is allowed. A writ of mandamus is issued directing the respondent Nos. 2 and 3 to consider the appointment of the petitioner on compassionate ground within six weeks from the date of filing of certified copy of the order.

(Rajesh Tandon, J.)
22-12-2005

ISB